No. 45917-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re:

ESTATE OF ANITA D. TUTTLE
Deceased

BRIEF OF APPELLANTS

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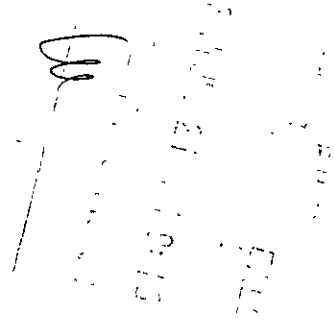

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I. INTRODUCTION

It has been the settled procedural law of Washington that a Defendant in a Civil Case must combine its process and jurisdictional motions under CR 12(B) at one time. Once a 12(b) Motion is made the Defendant waives the ability to assert other CR 12(b) in the future. *Sanders v. Sanders*, 63 Wn.2d 709, 388 P.2d 942 (1964).

The Trial Court enabled the Personal Representative to make successive Motions under CR 12 in violation of CR 12(g) and (h). The Estate's P.R. had waived the defenses of lack of jurisdiction over the person, insufficiency of process and insufficiency of service of process when it moved to strike an earlier hearing on CR 12 bases.

Further, the conduct of the P.R. should result in the determination that she was estopped from asserting additional jurisdictional defenses,. *Raymond v. Fleming*, 24 Wn. App. 112, 115, 600 P.2d 614 (1979).

Finally, the notice the Appellants furnished to the P.R. was consistent with the alternative manner of notifying the proponent of a Will in a Will Contest proceeding. RCW 11.24.020 and RCW 11.96A.

Because Orders of Dismissal are not favored in Washington and because the P.R. violated the clear and unambiguous provisions of CR 12; and because notice to counsel for the P.R., a "party" to the probate action, was permitted RCW 11.96A.100 of the Appellants' Petitions, the Trial Court's Order of Dismissal should be reversed.

II. ASSIGNMENTS of ERROR and ISSUES on APPEAL

A. ASSIGNMENT of ERROR

THE TRIAL COURT ERRED IN GRANTING THE P.R.'s MOTION TO DISMISS THE WILL CONTEST PETITIONS OF THE APPELLANTS?

B. ISSUES on ASSIGNMENTS of ERROR

(1) **Did the P.R. waive its CR 12(b)(2) and (4) and (5) Motions by when it made and was Granted its Motion to Strike at the Initial Court Hearing three months earlier?**

(2) **Does RCW 11.24.010 establish an alternative way to serve a Will Contest Petition under TEDRA - superceding In Re. Estate of Kordon, 157 Wn.2d 206, 137 P.3d 12 (2006)?**

(3) **Did Appellants comply with the Notice Requirements of RCW 11.24.020 when their Petitions were served in accordance with RCW 11.96A.100 as an alternative to service on the Estate P.R?**

(4) **Should the Trial Court have used the Plenary Power granted by RCW 11.96A to ensure that the disputes before it in the Estate proceedings proceed 'Right, Proper and Expeditiously"?**

III. STATEMENT OF THE CASE

Anita Tuttle died on April 22, 2013. On May 24, 2013, Patricia Hicklin petitioned in the Clallam County Superior Court to admit a Will purportedly executed by her mother on December 28, 2009. An Order admitting that Will was entered on April 22, 2013 and Mrs. Hicklin was confirmed as P.R./Executrix of the Estate. [**CP 040-041**].

The admitted Will disinherited five of Anita Tuttle's seven children, daughters Doreen Hunt, Sharon Horan, Roberta Gonzalez, Daisy Anderson and her son Robert E. Tuttle, Jr. [**CP 045**].

The Will provided that ninety percent of her estate would pass to Mrs. Hicklin with ten percent passing in Trust to her daughter Romona [Ramona was misidentified as 'Romona *Hicklin*' despite the fact that Romona's surname is "Tuttle"]. On Ramona's death, her ten percent share of the estate was to go to Patricia Hicklin. [**CP 045-046**].

On September 23, 2013 Sharon Horan and Doreen Hunt appeared Pro Se in the Superior Court to file a Will Contest Petition [**CP 36- 37**]. At the same time, Daisy Anderson filed her Pro Se Will Contest Petition [**CP 38-39**].[1] The Court Commissioner ordered Patricia Hicklin to appear at the Ex Parte Department of the Superior Court on October 4, 2013 to respond to those Petitions.[2]

Counsel for Mrs. Hicklin filed a response to the three Petitions two days later [**CP 029-31** and **026-28**]. Both responses included the following

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1 The Petitioners are sometimes referred to in this Brief as "Horan" "Hunt" and "Anderson" - Mrs. Hicklin is sometimes referred to as "Hicklin". No disrespect to any of the parties is intended by abbreviating their surnames.

2 The Order to appear was unintentionally omitted from the Appellant's Designation of Clerk's Papers A second Designation of Clerk's Papers has been filed requesting that this Order documents supplement the record on review.

paragraphs designated as I, II and III: **I.** ***Answer***; **II.** ***Affirmative Defenses*** and **III** ***Objection as to Notice of Hearing***. The *Objection* was to the date the Court had set for Mrs. Hicklin to appear at the Court (October 4, 2014).

At the Ex Parte hearing on October 4th, the Pro Se Petitioners appeared as did Mr. S. Barnhart, counsel for Mrs. Hicklin. [**CP 025**]. The Civil Minutes of the hearing show the following:

> '**MINUTES: Mr. Barnhart moves to strike today's hearing and have matter set for trial. No objection. Court strikes hearing and directs parties to Court Administrator for trial setting. Situation and P.R. remains status quo.**'

On December 24, 2013, counsel for Mrs. Hicklin filed a Motion to Dismiss the Will Contest Petitions pursuant to CR 12(b)(2), CR 12(b)(4) and CR 12(b)(5) [**CP 019-24**]. Counsel appeared for Anderson, Hunt and Horan [**CP 014**] to respond to their sisters' Dismissal Motion. On December 31, 2013, their counsel made a request that the Will Contest actions be set for trial. [**CP 016-17**].

The Notice of Trial Setting requested that the parties appear before the Court Administrator on January 10th to have the case assigned to a Judge and set for trial.

Mrs. Hicklin's dismissal motion was heard on January 10th before the Hon. Erik Rohrer. [**RP 1-35**] Judge Rohrer entered an Order of Dismissal of all of the Will Contest Petitions on January 15, 2014. [**CP 009-10**]. The Petitioners have Appealed that Order. [**CP 007**].

IV. DISCUSSION

THE STANDARD OF REVIEW

Orders of Dismissal are reviewed de novo, Vintage Construction Co. v. Bothell, 83 Wn. App. 605, 922 P.2d 828 (1996); In re Parentage of M.S. 28 Wn. App. 408, 922 P.2d 828 (2005).

1. DID MRS. HICKLIN WAIVE HER RIGHT TO MAKE MOTIONS UNDER CR 12(b)(2) and CR 12(b)(4) and (5) BY HAVING MADE THE EARLIER 'MOTION TO STRIKE'?

Two days after the Will Contest Petitions of Hunt, Horan and Anderson were received by the Estate's attorneys, counsel for Hicklin filed her Answer, Objection to Sufficiency of Notice and Affirmative Defenses to the Petitions.

The Affirmative Defenses cited 'lack of personal jurisdiction, lack of subject matter jurisdiction, insufficiency of service of process and insufficiency of process." The responsive pleading made separate objection 'to the Notice of the Hearing' - asserting that notice of a Will Contest Hearing 'must be given no less than twenty (20 days prior to the hearing) on the matter' **[CP 030, Lines 20-21].**

The Civil Minutes of the October 4, 2014 hearing before Commissioner Brent Basden reveal that the Hicklin's counsel ". . . move(d) to strike today's hearing and have (the) matter set for trial' **[CP 025 - Last**

Paragraph].

Court Commissioner Basden granted the P.R.'s motion to strike the hearing (due to insufficient notice) and '. . . *direct(ed) (the) parties to Court Administrator for trial setting*" [CP 25]

Court Rule 12 requires 'Every defense, in law or fact, to a claim for relief . . . be asserted in the responsive pleading thereto."

A party has the option of asserting certain specified defenses by motion. Those include, among others (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of service of process, and (4) insufficiency of service of process. CR 12(f) also enables a party to make a "Motion to Strike," if made within 20 days after service of the pleading.

CR 12(g) instructs a party making a motion under CR 12 to 'join with it any other motions . . . . for and then available to him.' Subsection (g) continues with the following cautionary provision:

> "If a party makes a motion under this rule but omits therefrom any defense or objection to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection CR(h)(2)."

The Supreme Court, in Sanders v. Sanders, 63 Wn.2d 709, 388 P.2d 942 (1964) ruled:

> "By the method provided in Rule 12, a defendant is permitted to raise a jurisdictional defense even where a voluntary appearance has (enabled) a court to adjudicate the merits of

> the controversy. The question of jurisdiction over the person must be decided without reference to the voluntary appearance, and, if decided in favor of the defendant, will be grounds for an immediate dismissal."

Continuing on with its analysis of Civil Rule 12, the Court's ruling continued:

> However, . . . "In order to preserve the jurisdictional question the defendant must proceed without equivocation, precisely and with dispatch. Where, as here, any other defense mentioned in Rule 12(b) [there a change of venue] is raised by motion, the objection to jurisdiction is waived unless it is either joined with such motion or accomplished prior to such motion."

CR 12(h)(1) codifies long standing authority that bars a litigant from making numerous - piecemeal - attacks on jurisdictional or process issues. Court Rule 12(b) provides:

> (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in section (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

The P.R.'s responsive pleadings, at Page 2, lines 15-21 made the specific **"OBJECTION AS TO NOTICE OF HEARING."** The P.R. argued that the Notice received by the P.R.'s counsel was 'less than twenty (20) days prior to the hearing . . ." Such an objection can only be considered to object to *process*. P.R.'s Motion to Strike" was a motion mentioned in CR 12 (CR 12(f)).

Division Three of the Court of Appeals has ruled that a motion, even

if based on an equivalent CR 12(b) motion results in the waiver of later motions. In accord are the following: Sanders, at page 714, Raymond v. Fleming, 24 Wn. App. 112, 115, 600 P.2d 614 (1979). *Citing* 5 C. Wright & A. Miller, Federal Practice 1344 at 526 (1969), Sangdahl v. Litton, 69 F.R.D. 641, 642-43 (S.D.N.Y. 1976), Doering v. Scandinavian Airlines, 329 F. Supp. 1081, 1082 (C.D. Cal. 1971); 3A L.Orland, Wn. Practice, 5157 at 185.

Interestingly, in Paragrah 3.2 of her Mrs. Hicklin's initial Response, she sought to preserve additional CR 12 '*objections as to process or service of process.*' **[CP 030, Lines 22-23]**. CR 12(g) prohibits the parceling out of essential jurisdictional, venue and joinder questions. CR (12)(d) requires those jurisdictional process, venue and joinder issues to be "*. . . heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.*" 'Motions to Strike' are included as CR 12(b) Pleadings. See CR 12(f).

Counsel for the Tuttle Estate made its Motion to Strike the October 4th hearing because the P.R. had not received notice more than twenty days prior to the hearing. The Court Commissioner granted the Estate's motion and also granted its counsel request to 'have (the) matter set for trial.'

Neither the Commissioner's oral ruling nor the Superior Court Civil Minutes of the hearing of October 4th mention the P.R. deferring or reserving any additional 12(b) Motions until a future date. Counsel for the P.R. certainly made no reference to such a possibility to the Court or Petitioners.

The "deferral" provision of CR 12(d) was not ordered by the Commissioner.

2. DID THE TRIAL COURT ERR IN GRANTING THE ESTATE's CR 12(b) MOTIONS AND DISMISSING APPELLANTS' WILL CONTEST PETITIONS?

Dismissals are not favored because the "overriding policy is that controversies should be decided on their merits." Johnson v. Cash Store 116 Wn. App. 833, 840, 68 P.3d 1099 (2003) (citations omitted. "A court should exercised its authority to the end that substantial rights be preserved and justice done between the parties." Lee v. Western Processing Co., Inc. 35 Wn. App 466, 468 , 667 P.2d 638 (1983)

Ninety-two days after the Will Contest Petitions had been filed, the P.R. of the Estate of Anita Tuttle filed her Motion to Dismiss the Will Contest Petitions of Sharon Horan, Daisy Anderson and Doreen Hunt on December 24, 2003. Hicklin argued that under CR 12(b)(2) and CR 12(b)(4) and (5), that subject matter and in personum jurisdiction was lacking. The P.R.'s Motion to Dismiss argued that service of process (and process itself) had been defective.[3]

Counsel for Mrs. Anderson, Doreen Hunt and Sharon Horan then appeared on the same day the CR 12(b) Motions were argued and requested

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A Declaration by process server Jim Fetter [**CP 051**] in a companion case against Mrs. Hicklin, reveals that when he went to the Hicklin residence on November 6th and a woman answered the door and stated to Mr. Fetter "she had never heard the name Patricia or Sid Hicklin" . . . and indicated "they did not live there" while someone was "peering through the curtains watching . . ." although the woman at the door had previously "stated she was the only one at home."

a trial setting on the Will Contest Petitions.

The Petitioner's Counsel indicated, on Page 2, lines 3-5 of the CR 40(b) Notice of Trial Setting [**CP 016-17**] that:

> *"1. This case has been at Issue since October 4, 2013 when the responsive pleadings were filed and the Court Commissioner considered the P.R.'s Motion to Strike and directed that the matter be set for Trial."*

No trial setting conference was conducted on January 10, 2014. The only matter considered by Judge Rohrer that day was the P.R.'s Motion to dismiss based on CR 12(b)(2), (4) *and* (5).

The Trial Court, in granting the Estate's second set of CR 12(b) Motions, impermissibly enabled the Estate to take 'two bites at the apple'; something CR 12(f) and CR 12(g) specifically prohibit.

Sanders, *supra*, sets forth the rationale for the limitations the Civil Rules place on multiple CR 12(b) jurisdictional and process motions,

> "Rule 12 was designed in part to restrict the making of a series of motions to attack a pleading, and it must be construed in accord with this goal."
>
> " . . . difficulties . . . arise when jurisdictional problems are left unsettled while various other matters are presented one after another. The result is too often confusion, guess-work and uncertainty, as well as probable delay, hardship and expense to the parties."

In *Kuhlman Equipment v. Tammematic, Inc., 29 Wn. App. 418, 628 P.2d 851 (1981)*, the Court of Appeals put it this way:

> "A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of
>
> process is waived (A) if omitted from a motion in the circumstances described in subdivision (g)[4], or (B) if it is neither made by motion under this rule nor included in a responsive pleading..."

The majority of Federal Courts interpretations of the identical Federal Rule of Civil Procedure find that the failure to join all available CR 12(b) jurisdictional and process questions at one time results in a waiver of any unasserted requests for CR 12(b) relief. *Neifeld v. Steinberg*, 438 F.2d 423, (3rd Cir. 1971).

In this case, Mrs. Hicklin first sought to strike the Appellant's initial hearing at the Ex Parte calendar on October 4th - on the ground she hadn't received sufficient notice of the hearing - then waited ninety-two days before making her second series of CR 12(b) requests for relief, at a time (ninety days after) the RCW 11.24 Petitions *arguably* should have been personally served on the P.R.[5]

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4 CR 12(g) provides as follows: "A party who makes motion under this rule may join it with any other motions herein provided for and then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated."

5 Appellants reference to Hicklin's argument that personal service of a RCW 11.24 Will Contest Petition does not constitute an abandonment (argued in Parts 3 and 4 below) and that a Will Contest action filed under RCW 11.24 020 need not be personally served on a P.R.

The tactics employed by Mrs. Hicklin worked to the great disadvantage to the Petitioners. Arguably, they were "lulled to sleep" when they heard Hicklin's counsel request that the case be set for trial at the October 4th hearing. Then, after eight weeks had passed, the P.R. made her C.R. 12(b) motions to dismiss their petitions.

In *Raymond v. Fleming*, such similar conduct resulted in the Court of Appeals finding a Waiver of process defects - or as well as deciding the defendant was estopped from asserting such defects as grounds for dismissal.

See, *Raymond v. Fleming*, 24 Wn. App. 112, 600 P.2d 614 (1979) Review denied. There Justice Williams reasoned that defense counsel's actions (in certain circumstances) could work to create a waiver of any defect in service of process *or* to estop a Defendant from making a CR 12(b) motion for dismissal for lack of service of process.

The Court discussed the application of equitable estopped in such circumstances, stating: "estoppel involves an admission, statement, or act inconsistent with the claim afterwards asserted; or an action or inaction by the other party on the faith of such admission, statement, or act; and injury to such other party arising from permitting the first party to contradict or repudiate such admission, statement or act. *Arbogast v. Westport*, 18 Wn. App. 4, 7, 567 P.2d 244 (1977)."

The decision continued:

> "If the unfair tactical advantage demonstrated in the circumstances [sought by Mr. Fleming's counsel] was permitted, Mr. Raymond would be denied a forum for his grievances. Such an outcome may be relieved by the doctrine of equitable estoppel. *Tresway Aero, Inc. v. Superior Court*, 5 Cal. 3d 431, 487 P.2d 1211, 96 Cal. Rptr. 571 (1971)."

Mrs. Hicklin's objection to insufficient notice of the initial hearing, her successful motion to Strike that hearing, the request that the case be set for trial, her apparent avoidance of service of process six weeks later (albeit in a companion case) constitutes conduct which should not be condoned. She should have been estopped from asserting the CR 12(b) Motions.

Under the express provisions of CR 12(f) and (g), the second set of CR 12(b) motions should not have been granted. Judge Rohrer committed reversible error when he failed to recognize that CR 12(g) barred the relief Hicklin was requesting. This Court can correct the injustice below by finding Hicklin had waived the right to assert those new CR 12(b) defenses she sought to raise in December of 2013.

Alternatively, this Court should rule the tactics used by Hicklin's (and her counsel's) between the initial hearing on October 4th and the filing of the CR 12(b) motions on December 24th should work to estop her from obtaining an Order Dismissing her sisters' Petition to contest their mother's Will.

3. **DOES RCW 11.24.020 and 11.96(A) CREATE A SECOND WAY TO COMMENCE A WILL CONTEST ACTION UNDER TEDRA and DOES THAT STATUTE SUPERCEDE THE RULING OF In Re Estate of Kordon, 157 Wn. 2d 206, 137 P. 3d. 12 (2006)?**

In 2006, the Supreme Court in the case of '*In Re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006) ruled that a contestant to a Will had to personally serve the personal representative to obtain personal jurisdiction over the Estate's P.R.

However, in the 2006 Session Laws, Chapter 360 §9, (effective June 7, 2007) the legislature enacted an alternate way of giving 'Notice' of a will contest action. That statute, codified as RCW 11.24.020 provides:

> **"11.24.020. Filing of Will Contest Petition--Notice**
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> ---
>
> **Upon the filing of the petition referred to in RCW 11.24.010, notice shall be given *as provided in RCW 11.96A.100* to the executors have taken upon themselves the execution of the will, . . . to all legatees named in the will or to their guardians if any of them are minors or their personal representatives if any of them are dead, and to all persons interested in the matter . . ."**
>
> (Emphasis Added)

RCW 11.96A.100 does ***not*** require or call for personal service of Will Contest Petitions. That statute, a part of the TEDRA act, contains its own procedural rules which allow for - if not bless - service on 'parties to the existing judicial proceeding' *other than* by personal service.

The pertinent parts of RCW 11.96A.100 which bear on Service and Notice of such Petitions are as follows:

> **11.96A.100 Procedural Rules.**
>
> "Unless rules of court or this title provides otherwise, or unless a court rules otherwise:
>
> **(1)** . . . .
>
> **(2)** **A summons must be served in accordance with this chapter, and, where not inconsistent with these rules, the procedural rules of court, however, <u>if the proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same ... estate ..., notice must be provided by summons only with respect to those parties who were not already parties to the same judicial proceedings;</u>**
> (Emphasis Added)

Under RCW 11.96A.100, an action (such as the Petitioners' Will Contest proceeding) 'commenced *<u>incidental</u>* *<u>to</u>* an existing Probate Proceeding' does not require a Summons for those - those such as Patricia Hicklin - who were '***already a <u>party</u> to the same judicial proceeding***.' This is presumably because such a party (such as an Executrix) is already subject to the jurisdiction of the Probate Court.

By reference to the TEDRA Notice (and the Procedural Rules set forth in RCW 11.96A.100), and the legislature's adoption of RCW 11.24.010 and RCW 11.24.020(2) 'Notice' and Personal Jurisdiction procedures have been statutory adopted which simplify and make considerably less

burdensome the manner in which a Court may hear and adjudicate will contests between contestants and a Personal Representative who are already a 'party' to the proceeding.

The legislatures expressed intent in drafting the TEDRA Act in 1999 is instructive. The legislature's intent is clearly expressed in RCW 11.96A.020. That section of TEDRA provides Superior Courts with 'full and ample power and authority . . . to administer and settle (a) All matters concerning estates . . . '

Section (2) of the Statute then provides:

> " (2) If this title should in any case or under any circumstance be inapplicable, insufficient, or *doubtful* with reference to the administration and *settlement of the matters listed in subsection (1) of this section*, the court nevertheless has full power and authority to proceed with such administration and settlement *in any manner and way that to the court deems right and proper*, all to the end that *the matters be expeditiously* administered and *settled* ***by the Court***."
> (Emphasis Added)

The legislature intended to give Superior Courts the Plenary Power to ensure that disputes in Estate matters be 'expeditiously settled'. The TEDRA procedural rules in RCW 11.96A.100, adopted *by specific reference* in RCW 11.24.020, allow 'parties' in judicial proceedings to provide notice to 'parties to existing judicial proceedings' by means other than personal service of a Summons. Under the very words of the statute, such parties'

need ***not*** be given 'notice ... by summons'.

The Trial Court committed reversible error in dismissing the Appellants' Petitions for not having personally served the P.R. with process.

4. **DID THE APPELLANTS COMPLY WITH THE ALTERNATE NOTICE REQUIREMENTS OF RCW 11.24.020 BY SERVING THEIR PETITION and CITATION 'IN ACCORDANCE WITH RCW 11.96A.100 - UNDER RCW 11.96A IS PERSONAL SERVICE ON THE P.R. REQUIRED?**

RCW 11.96A.100 allows for 'notice' by means other than personal service of a Summons. The question arises, why would the legislature so provide? The answer must be that because a Personal Representative is already a 'party' to the Probate proceeding, the legislature appears *either* to believe there would be little utility to require a person who is already part of the proceeding to be personally served with process, *or* the legislature elected to trust the Superior Court to determine what sort of notice need be provided to a party to an action before the Court.

5. **SHOULD THE TRIAL COURT HAVE USED ITS RCW 11.96A "PLENARY POWER" TO ENSURE THAT THE TUTTLE ESTATE DISPUTE PROCEED 'PROPER and EXPEDITIOUSLY'**

In Section 2 of RCW 11.96A.020, the legislature's expresses its confidence in the wisdom of Trial Court Judges by granting the Superior Court with "full power and authority" . . . "in any way that to the court deems right and proper . . . to the end that the matters be expeditiously administered."

Therefore, the legislature indicated that if it appears to a Court that it would be "right and proper" for a party, such as Mrs. Hicklin, to receive notice of a Will Contest action by way of service on her counsel, because she is already a party to the proceedings, the Court can consider whether there exists any reason or utility in requiring the Executor receive additional, formal, service of process.

In this case there exists *no doubt whatsoever* that the Executor/Personal Representative was aware of the Will Contest proceeding. Mrs. Hicklin's attorney not only appeared at the initial hearing in the Superior Court, but filed a formal response, *on her behalf*, and made a request to have the case set for trial.

Because the Legislature has indicated its desire that matters involving Probates of Estates be dealt with 'expeditiously' and subject to the Plenary Power of the Superior Court; the Superior Court 'has full power and authority to proceed ... in any manner and way that the Court deems right and proper.'

It was right and proper, and would have served justice, for the Trial Court to have declined Hicklin's Motion to Dismiss, and allow the Will Contest action to proceed to trial - because the P.R.'s attorney had received notice of the pendency of the action and simply objected to less than twenty days notice of the initial hearing - and specifically requested that the initial hearing be stricken and the case set for trial on the merits of the Petitions.

The 'expeditious' 'administration' of a Will Contest case such as the one Anita Tuttle's three daughters filed in the Clallam County Superior Court was not served by allowing the Estate to first ask to strike a hearing, second ask to have the issues tried and then to request that the Petitions be dismissed.

This is particularly the case when the Court Commissioner directed the parties 'to the Court Administrator for trial setting', which is exactly what the Petitioners did once they retained counsel to assist them in the action that was pending. As is noted above, the Appellant's request for a trial setting was scheduled on the very day and at the same time as the trial court heard and the Estate's CR 12(b) Motions.

D. ATTORNEY FEE REQUEST

RAP 18.1(a) provides:

> 'If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review . . . The party must request the fees or expenses as provided in this rule . . ."

RCW 11.96A.150 provides:

> (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; . . . The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

Appellants request attorney fees and costs incurred on this appeal.

E. CONCLUSION

The Trial Court misapplied the service and procedural rules set forth in RCW 11.24.020, applicable to Personal Representatives who resist Will Contest Petitions when already parties to the probate proceedings. Dismissal was based solely on the personal service requirements of RCW 11.24.010.

Had the legislature had intended Will Contest Petitions be personally served on Estate P.R.'s, then the parts of RCW 11.24.020 which weren't consistent with .010 would not have been included in the 2006 amendments.

Assuming, without conceding, that Judge Rohrer could have dismissed Appellants' Petitions for failing to have met the strict service requirements of RCW 11.24.010; he erred in having permitted Mrs. Hicklin to raise her CR 12(b) and 12(f) Motions in a serial manner. *Doing so not* only violated the express prohibition of CR12(g), but the Trial Court's blessing of that type of civil practice is entirely inconsistent with the intent expressed by the legislature in TEDRA.

Finally, this Court should find Mrs. Hicklin equitably estopped from employing the "ball-hiding" tactics evident in the record. On these bases, the Trial Court's Order dismissing Appellants' Petitions should be reversed.

RESPECTFULLY SUBMITTED on July 18, 2014.

BARRY C. KOMBOL, WSBA #8145

CERTIFICATE OF MAILING

Susan Burnett, certifies under penalty of perjury of the laws of the State of Washington as follows:

1. That she is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of twenty-one years, not a party to the above-entitled action and competent to be a witness therein:

That on the 18th day of July, 2014, the Appellants' Opening Brief was placed in the U.S. Mail, First Class, Postage Prepaid to:

Mr. Simon Barnhart, Esq.
Attorney at Law
403 South Peabody Street
Port Angeles, WA. **98362**

That on the 11th day of July, 2014, the Appellants' Opening Brief was E-Mailed to Mr. Simon Barnhart, Esq at sbarnhart@plattirwin.com.

DATED: July 18, 2014 at Black Diamond, Washington

Susan Burnett

Susan Burnett, Paralegal
Rainier Legal Center, Inc.